

1 TOWN OF LONDONDERRY
2 ZONING BOARD OF ADJUSTMENT
3 MOOSE HILL COUNCIL CHAMBERS
4 268B MAMMOTH ROAD
5 LONDONDERRY, NH 03053

6
7 AUGUST 16, 2023 MEETING
8 7:00 P.M.
9

10
11 I. CALL TO ORDER
12

13 **Members Present:** Jaqueline Benard, Chair; Suzanne Brunelle, Vice Chair; Mitchell
14 Feig, Member; Chris Moore, Alternate; Robert Robicsek, Alternate.

15
16 **Also Present:** Kellie Caron, Assistant Town Manager/Director of Economic
17 Development
18

19 Chair Benard called the meeting to order at 7:00 PM, and described the meeting
20 procedure.
21

22 II. APPROVAL OF DRAFT MINUTES - July 19, 2023
23

24 Chair Benard appointed C. Moore and R. Robicsek as voting members for the
25 meeting.
26

27 **S. Brunelle moved to accept the minutes of the July 19, 2023, meeting as**
28 **written. M. Feig seconded the motion. A vote was taken, all were in favor**
29 **except Chair Benard and R. Robicsek, who abstained. The motion passed 3-**
30 **0-2.**
31

32 III. REPORT BY TOWN COUNCIL LIAISON
33

34 There was no report by the Town Council Liaison
35

36 IV. REGIONAL IMPACT DETERMINATIONS
37

38 K. Caron announced that staff is recommending that cases 8-16, 23-1, 23-2, 23-3,
39 23-4, and 23-5 are not of regional impact.
40

41 **C. Moore moved to accept the regional impact determination. M. Feig**
42 **seconded the motion. A vote was taken, all were in favor. The motion**
43 **passed 5-0-0.**
44

45 V. PUBLIC HEARING OF CASES
46

47 S. Brunelle recused herself from the Board.
48

49 **M. Feig moved to continue cases 6/21/2023 2 through 6 to the September**
50 **20, 2023, meeting. R. Robicsek seconded the motion. A vote was taken, all**
51 **were in favor. The motion passed 4-0-0.**

52
53 **A. Request for Re-hearing regarding Case No. 06/21/2023-1 in**
54 **which the Board denied a variance under LZO 4/1/2 to allow**
55 **multi-family residential in the Industrial II Zoning District, 104**
56 **Grenier Field Road, Map 17 Lot 2, Zoned Ind-II, Londonderry**
57 **Holdings, LLC (Owner & Applicant).**

58
59 Chair Benard stated the Board has reviewed and will grant a hearing.

60
61 **R. Robicsek moved to grant the re-hearing request for Case No.**
62 **06/21/2023-1 to September 20, 2023. M. Feig seconded the motion. A**
63 **vote was taken, all were in favor. The motion passed 4-0-0.**

64
65 S. Brunelle returned to the Board.

66
67 **B. CASE NO. 08/16/2023-1: Request for a variance from Section**
68 **4.2.1.3(C) of the Londonderry Zoning Ordinance to allow a**
69 **garage to be located 16.3 feet from the front property line where**
70 **a 40-foot setback is required, 3 Meadow Drive, Map 4, Lot 38,**
71 **zoned AR-1, Timothy L. Savoy and Ayse Kalkan-Savoy, owners**
72 **and applicants.**

73
74 S. Brunelle read the case into the record.

75
76 George Chadwick of Bedford Design Consultants, representing Mr. and Mrs. Savoy,
77 appeared before the Board. He presented the request to build a garage and
78 reviewed the proposed plan, which includes relocating a shed to the rear of the
79 house. Meadow Drive is located 34 feet from the property line, so the proposed
80 garage would be 50 feet from Meadow Drive.

81
82 He submitted three photographs of the property, which Chair Benard marked
83 Exhibits A, B, and C. He also submitted drawings of the proposed structure, which
84 Chair Benard marked Exhibit D. Mr. Chadwick noted the garage meets the 16-foot
85 side setback.

86
87 Chair Benard asked for Board input. S. Brunelle asked about the status of the land
88 between Meadow Drive and the lot line. Mr. Chadwick explained this is the Town
89 right-of-way. The Board noted portions of the existing carport and the house are
90 within the right-of-way. Mr. Chadwick said he believes the house was built before
91 the zoning regulations were stringently enforced. He noted buildings on four
92 neighboring properties on Meadow Drive are equal to or less than 50 feet from the
93 pavement.

94
95 The Board asked about the intended use of the second level of the garage and Mr.
96 Savoy said it will be for storage. The Board asked if there was a permit for the

existing shed. Mr. Savoy said he requested one from the Town and was told he was "all set," so built the shed, but never received the permit.

Mr. Chadwick presented a copy of the tax map to the Board. Chair Benard marked this as Exhibit E.

Mr. Chadwick reviewed the five points of law:

1) The variance is not contrary to the public interest, as it will serve to improve the property and bring the structures into conformance. It will not alter the essential character of the neighborhood, as there are residences located approximately 50 feet from the pavement. The construction of the garage will not affected the health, safety, and general welfare of the public.

2) The spirit of the ordinance is observed, as the current subdivision regulations require the front property line to be 13 feet from the edge of pavement, with a 40-foot setback. Meadow Drive is not centered in the right-of-way. The garage will not encroach on the side setback and will be 50 feet from the Meadow Drive travel way.

3) Granting the variance will do substantial justice, as the variance will allow a detached garage to be added to the property, which will add value without impacting the value of the surrounding properties. The loss to the applicant would outweigh any loss that the general public would experience.

4) The values of the surrounding properties would not be diminished. The existing shed will be relocated and adding the garage will be an improvement to the property, and only increase the value of the surrounding properties. The visual impact of the garage would be negligible.

5) The literal enforcement of the provision of the ordinance would result in unnecessary hardship.

a. For purposes of this sub-paragraph, unnecessary hardship means owing to the special conditions of the property that would distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. The proposal is for a garage to be placed 50 feet from the edge of pavement. The proposed use is a reasonable one, as a garage is an allowed accessory use and would not affect the health or safety of the public.

b. If the criteria of sub-paragraph (a) is not established, an unnecessary hardship will be deemed to exist if and only if, owing to the special conditions of the property that would distinguish it from other properties in the area, the property cannot be reasonably used to the strict conformance with the ordinance. The variance would therefore be necessary to enable the reasonable use of it. The garage cannot be pushed back within the existing setback due to the location of the leach field. The garage cannot be located on the other side of the property due to the slope of the land and the existing wells.

Chair Benard invited public input; there was none.

S. Brunelle read a letter into the record from Constance Patchen of 33 Kendall Pond Road supporting this application.

145 The Board closed public input and began deliberation.

146
147 S. Brunelle reviewed the criteria for granting the variance:

148
149 1) Granting the variance would not be contrary to the public interest, as the loss to
150 the applicant would be greater than the loss to the public. No concerns for health,
151 safety, or welfare exist and it would not alter the character of the neighborhood.

152 2) The spirit of the ordinance would be observed, as building a garage in this
153 location would not harm the safety, health, or welfare of the public.

154 3) Granting the variance would do substantial justice, as it adds value to the
155 property without affecting the value of the neighbors' properties. It does no harm.
156 The applicant's loss would be greater than any gain to the public.

157 4) The values of the surrounding properties would not be diminished.

158 5) a. Owing to special conditions of the property that distinguish it from other
159 properties in the area, denial of the variance would result in unnecessary hardship
160 because there is not a fair and substantial relationship between the general public
161 purpose of the ordinance provision and the specific application of that provision to
162 the property. Substantial justice has been done and there is a unique characteristic
163 of this property with the way the house was constructed. The slope and other
164 features of this lot are unique to substantiate it. b. The proposed use is a
165 reasonable one because garages are reasonable.

166
167 Chair Benard added a condition that the garage shall not be any larger than as
168 presented on the plan.

169
170 **R. Robicsek moved that the request for a variance in CASE NO.**
171 **08/16/2023-1: Request for a variance from Section 4.2.1.3(C) of the**
172 **Londonderry Zoning Ordinance to allow a garage to be located 16.3 feet**
173 **from the front property line where a 40-foot setback is required, 3 Meadow**
174 **Drive, Map 4, Lot 38, zoned AR-1, Timothy L. Savoy and Ayse Kalkan-**
175 **Savoy, owners and applicants, be approved, conditional to the overall**
176 **footprint of the garage not exceeding the dimensions in the provided**
177 **application for footprint and height limitations.**

178
179 Chair Benard reopened input. Mr. Chadwick said he would prefer the height of the
180 garage not be conditioned. They are asking for a setback variance, not a height
181 variance. The height of the garage will meet the Town requirements.

182
183 **R. Robicsek moved to approve CASE NO. 08/16/2023-1: Request for a**
184 **variance from Section 4.2.1.3(C) of the Londonderry Zoning Ordinance to**
185 **allow a garage to be located 16.3 feet from the front property line where a**
186 **40-foot setback is required, 3 Meadow Drive, Map 4, Lot 38, zoned AR-1,**
187 **Timothy L. Savoy and Ayse Kalkan-Savoy, owners and applicants, with a**
188 **restriction that the garage shall not be any larger in size and location than**
189 **stated on the plan by Bedford Design Consultants dated July 10, 2023. M.**
190 **Feig seconded the motion. A vote was taken; all were in favor. The motion**
191 **passed 5-0-0.**

C. CASE NO. 08/16/2023-2: Request for a variance from Section 4.6.6.7.F.5.b of the Londonderry Zoning Ordinance to allow a sign 20 ft. in height where 10 ft. is the maximum permitted, 174/178 Rockingham Road, Map 15, Lot 61 & 61-7, zoned C-II, 28 Performance Overlay District, 2V Londonderry LLC, owner, Nouria Energy Corporation, applicant.

S. Brunelle read the case into the record.

Ari Pollock of Gallagher, Callahan, and Gartrell of Concord, representing Nouria Energy Corporation, and Mike Durant of Nouria Energy Corporation appeared before the Board. Nouria is the tenant of 2V Londonderry LLC, the owner of 174/178 Rockingham Road. Nouria recently obtained a conditional use permit for gasoline station use and site plan approval to improve three merged lots with a gas service station, convenience store, and café.

He described the design and location of the proposed freestanding sign. He noted the variance refers to the design, not the placement, of the sign. The building site is lower than the road, so a taller sign is needed to put the message board portion at a height where it can be seen by drivers.

Mr. Pollock reviewed the five points of law:

1) The variance is not contrary to the public interest in that a taller sign does not alter the essential character of the district, the streetscape, or the permitted and approved use of this lot.

2) The spirit of the ordinance is observed, as the POD district is intended to "promote and attract high-quality and diverse and sustainable economic development within the district by utilizing performance standards and flexibility." This flexibility is what the applicant is requesting.

3) Substantial justice would be done by granting the variance, as there is no harm that would come to the public by allowing a taller sign.

4) The values of the surrounding properties would not be diminished. The application elevations show a tasteful, welcoming, and attractive site and a sign with complementary appearance, lighting, and landscaping.

5) A literal enforcement of the provision of the ordinance would result in a hardship, since it would punish the landowner for merging three properties into one. Three smaller signs could have been erected, if the lots remained separate.

Chair Benard asked for Board input. The Board asked the difference in elevation of the road and the building site. Mr. Pollock estimated it was from six to eight feet.

Chair Benard asked for public input; there was none.

The Board closed public input and began deliberation.

S. Brunelle reviewed the five points of law:

- 241 1) Granting the variance would not be contrary to the public interest, as the height
242 of the sign is not contrary to the public interest and does not alter the character of
243 the district or the area. The height of the sign does not pose a health or safety
244 hazard.
- 245 2) The spirit of the ordinance would be observed, as the health, safety, and welfare
246 of the public is preserved at 20 feet versus 10 feet for the gas station sign.
- 247 3) Granting the variance would do substantial justice, as granting a variance for the
248 height will not cause any harm to the general public. The applicant's loss would be
249 greater than any gain to the public.
- 250 4) For the following reasons, the values of the surrounding properties would not be
251 diminished. This is a commercial area with numerous commercial properties. The
252 height of the sign would not impact surrounding property values.
- 253 5) a. Owing to the special conditions of the property that distinguish it from other
254 properties in the area, denial of the variance would result in unnecessary hardship
255 because there is not a fair and substantial relationship between the general public
256 purpose of the ordinance provision and the specific application of that provision to
257 the property, as the property is on a downgrade and on a busy road. Due to the
258 height of the sign, the motorists are able to see the sign and know that they can
259 safely access the gas station. b. The proposed use is a reasonable one because
260 signs are reasonable.

261
262 **S. Brunelle moved CASE NO. 08/16/2023-2: Request for a variance from**
263 **Section 4.6.6.7.F.5.b of the Londonderry Zoning Ordinance to allow a sign**
264 **20 ft. in height where 10 ft. is the maximum permitted, 174/178**
265 **Rockingham Road, Map 15, Lot 61 & 61-7, zoned C-II, 28 Performance**
266 **Overlay District, 2V Londonderry LLC, owner, Nouria Energy Corporation,**
267 **applicant, be approved, as it meets the five criteria. M. Feig seconded the**
268 **motion. A vote was taken; all were in favor. The motion passed 5-0-0.**
269

270 **D. CASE NO. 08/16/2023-3: Request for a variance from Section**
271 **4.6.6.7.F.5.c.i of the Londonderry Zoning Ordinance to allow a**
272 **sign 70 sf. in area where 30 sf. is the maximum permitted,**
273 **174/178 Rockingham Road, Map 15, Lot 61 & 61-7, zoned C-II,**
274 **28 Performance Overlay District, 2V Londonderry LLC, owner,**
275 **Nouria Energy Corporation, applicant.**
276

277 S. Brunelle read the case into the record.
278

279 Ari Pollock of Gallagher, Callahan, and Gartrell of Concord, representing Nouria
280 Energy Corporation, and Mike Durant of Nouria Energy Corporation appeared before
281 the Board. Nouria is the tenant of 2V Londonderry LLC, the owner of 174/178
282 Rockingham Road.
283

284 Mr. Pollock stated the facts of this matter are identical to the prior case. This
285 request is for a larger sign area of 70 feet, where 35 feet is allowed.
286

287 Mr. Pollock reviewed the five points of law:
288

1) The variance is not contrary to the public interest in that a larger sign does not alter the essential character of the district, the streetscape, or the permitted and approved use of this lot. The café and sub-tenant can be advertised on the sign and allows drivers to locate the site.

2) The spirit of the ordinance is observed, as the POD district is intended to "promote and attract high-quality and diverse and sustainable economic development within the district by utilizing performance standards and flexibility." This flexibility is what the applicant is requesting.

3) Substantial justice would be done by granting the variance, as there is no harm that would come to the public by allowing a larger sign. The public will be better able to see the uses of the site and to locate the site.

4) The values of the surrounding properties would not be diminished. The application elevations show a tasteful, welcoming, and attractive site, and a sign with complementary appearance, lighting, and landscaping.

5) A literal enforcement of the provision of the ordinance would result in a hardship, since it would punish the landowner for merging three properties into one. Three smaller signs could have been erected, if the lots remained separate.

Chair Benard asked for Board input. The Board asked for clarification regarding the dimensions of the sign. Mr. Pollock estimated the dimensions at 8 feet by 14 feet. Chair Benard asked how many tenants could be housed in this building. Mr. Pollock clarified there is only one in the café. Nouria has a small café, along with the tenant.

K. Caron noted for the purposes of issuing a permit, the Building Department has the renderings and schematics with detailed measurements.

Chair Benard asked for public input; there was none.

The Board closed public input and began deliberation.

S. Brunelle reviewed the five points of law:

1) Granting the variance would not be contrary to the public interest, as the size of the sign is not contrary to the public interest and does not alter the character of the district or the area. The height of the sign does not pose a health or safety hazard.

2) The spirit of the ordinance would be observed, as the health, safety, and welfare of the public is preserved.

3) Granting the variance would do substantial justice, as granting a variance for the size is not going to cause any harm to the general public. The applicant's loss would be greater than any gain to the public.

4) For the following reasons, the values of the surrounding properties would not be diminished. This is a commercial area with numerous commercial signs and properties.

5) a. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to

the property because the property is on a downgrade and on a busy road. The motorists are able to see the sign and know that they can safely access the gas station. b. The proposed use is a reasonable one because signs are reasonable.

C. Moore moved to approve the variance request in CASE NO. 08/16/2023-3 from Section 4.6.6.7.F.5.c.i of the Londonderry Zoning Ordinance to allow a sign 70 sf. in area where 30 sf. is the maximum permitted, 174/178 Rockingham Road, Map 15, Lot 61 & 61-7, zoned C-II, 28 Performance Overlay District, 2V Londonderry LLC, owner, Nouria Energy Corporation, applicant as presented. M. Feig seconded the motion. A vote was taken; all were in favor. The motion passed 5-0-0.

E. CASE NO. 08/16/2023-4: Request for a variance from Section 4.6.6.7.F.5.e. to allow a sign that is neither a monument sign nor a directory sign, where these are the permitted sign types, 174/178 Rockingham Road, Map 15, Lot 61 & 61-7, zoned C-II, 28 Performance Overlay District, 2V Londonderry LLC, owner, Nouria Energy Corporation, applicant.

S. Brunelle read the case into the record.

Ari Pollock of Gallagher, Callahan, and Gartrell of Concord, representing Nouria Energy Corporation, and Mike Durant of Nouria Energy Corporation appeared before the Board. Nouria is the tenant of 2V Londonderry LLC, the owner of 174/178 Rockingham Road.

Mr. Pollock stated the code office pointed out that a variance was required due to the distance between the pylons, which is non-compliant.

Mr. Pollock reviewed the five points of law:

1) The variance is not contrary to the public interest, in that the pylon nature of the design does not alter the character of the district, the streetscape, the use, or the sign. A taller sign will help the public locate the site.

2) The spirit of the ordinance is observed, as the POD district is intended to "promote and attract high-quality and diverse and sustainable economic development within the district by utilizing performance standards and flexibility." This flexibility is what the applicant is requesting.

3) Substantial justice would be done by granting the variance, as there is no harm that would come to the public by allowing a sign with a narrower base than top.

4) The values of the surrounding properties would not be diminished. The application elevations show a tasteful, welcoming, and attractive site, and a sign with complementary appearance, lighting, and landscaping.

5) A literal enforcement of the provision of the ordinance would result in a hardship, since it would require the pylons to be moved outward, which would look strange. It is reasonable to have a sign of this design and shape.

Chair Benard asked for Board input. The Board asked why this needs to be voted on. K. Caron said this was a determination made by the zoning administrator based on how he interprets the regulations. She stated if the Board deems that interpretation to be something other than what was made, it can be discussed. R. Robicsek noted that a monument sign would have a base contiguous with the sign or close to it. This is a foundation or a footing, per the drawing. Mr. Pollock noted they did not file any appeal of the administrator's decision and it would be easier if a variance would be considered.

Chair Benard asked for public input; there was none.

The Board closed public input and began deliberation.

S. Brunelle reviewed the five points of law:

1) Granting the variance would not be contrary to the public interest, as permitting a freestanding sign as proposed by the petitioner is not contrary to the public interest and does not alter the character of the district or the area. The height of the sign does not pose a health or safety hazard.

2) The spirit of the ordinance would be observed, as the health, safety, and welfare of the public is preserved.

3) Granting the variance would do substantial justice, as granting a variance is not going to cause any harm to the general public. The applicant's loss would be greater than any gain to the public.

4) For the following reasons, the values of the surrounding properties would not be diminished. This is a commercial area with numerous commercial signs and properties.

5) a. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship, as there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property, as the property is on a downgrade and on a busy road. The motorists are able to see the sign and know that they can safely access the gas station. b. The proposed use is a reasonable one because signs are reasonable.

R. Robicsek moved in CASE NO. 08/16/2023-4: Request for a variance from Section 4.6.6.7.F.5.e. to allow a sign that is neither a monument sign nor a directory sign, where these are the permitted sign types, 174/178 Rockingham Road, Map 15, Lot 61 & 61-7, zoned C-II, 28 Performance Overlay District, 2V Londonderry LLC, owner, Nouria Energy Corporation, applicant, be approved. S. Brunelle seconded the motion. A vote was taken; all were in favor. The motion passed 5-0-0.

F. CASE NO. 08/16/2023-5: Request for a variance from Section 7.7.E.3 of the Londonderry Zoning Ordinance to allow a changeable electronic sign where changeable electronic signs are not permitted, 174/178 Rockingham Road, Map 15, Lot 61 & 61-

7, zoned C-II, 28 Performance Overlay District, 2V Londonderry LLC, owner, Nouria Energy Corporation, applicant.

S. Brunelle read the case into the record.

Ari Pollock of Gallagher, Callahan, and Gartrell of Concord, representing Nouria Energy Corporation, and Mike Durant of Nouria Energy Corporation appeared before the Board. Nouria is the tenant of 2V Londonderry LLC, the owner of 174/178 Rockingham Road.

Mr. Pollock explained the request is to allow changeable electronic numbers or prices where changeable messaging is prohibited. This will allow the prices to be updated safely and remotely, without manual changes.

Mr. Pollock reviewed the five points of law:

- 1) The variance is not contrary to the public interest in that changeable pricing does not alter the essential character of the district, the streetscape, the use, or the sign. Changeable pricing is commonplace in this industry and eliminates the need for employees to use ladders and poles in all weather conditions.
- 2) The spirit of the ordinance is observed, as the prohibition is intended to police against flashing or distracting messaging and video signs, not the type of infrequent changes for fuel pricing that are proposed here.
- 3) Substantial justice would be done by granting the variance, as there is no harm that would come to the public by allowing infrequent price changes.
- 4) The values of the surrounding properties would not be diminished, as fuel price changes are not flashing or rapidly changing video messaging.
- 5) A literal enforcement of the provision of the ordinance would result in a hardship, since it would cause employees to work with poles and ladders in proximity to an active arterial roadway. Price changes are infrequent and would not be noticeable to the general public. Changeable pricing is commonplace, therefore reasonable.

Chair Benard asked how many times the pricing changes. Mr. Durant said it averages once or twice a day. Chair Benard asked what colors will be on the sign. Mr. Pollock said the rendering depicts what the sign will look like.

Chair Benard asked for public input; there was none.

The Board closed public input and began deliberation.

S. Brunelle reviewed the five points of law:

- 1) Granting the variance would not be contrary to the public interest, as permitting changeable electronic pricing as proposed by the petitioner is not contrary to the public interest and does not alter the character of the district or the area. The height of the sign does not pose a health or safety hazard.

2) The spirit of the ordinance would be observed, as having an occasional price change would not endanger the health, safety, and welfare of the public. As employees are members of the public, this would be a benefit to them.

3) Granting the variance would do substantial justice, as the applicant's loss would be greater than any gain to the public, if the variance is denied.

4) For the following reasons, the values of the surrounding properties would not be diminished. There is no evidence to suggest that changing pricing at a certain interval would harm surrounding commercial properties, diminish property values, or pose a health and safety risk.

5) a. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship, as there is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is on a downgrade and on a busy road. The motorists are able to see the sign and know that they can safely access the gas station. b. The proposed use is a reasonable one because signs that display a changeable price for a product are reasonable.

S. Brunelle moved CASE NO. 08/16/2023-5: Request for a variance from Section 7.7.E.3 of the Londonderry Zoning Ordinance to allow a changeable electronic sign where changeable electronic signs are not permitted, 174/178 Rockingham Road, Map 15, Lot 61 & 61-7, zoned C-II, 28 Performance Overlay District, 2V Londonderry LLC, owner, Nouria Energy Corporation, applicant, be approved, as they met the five criteria. C. Moore seconded the motion. A vote was taken; all were in favor. The motion passed 5-0-0.

VI. COMMUNICATIONS AND MISCELLANEOUS

There was no communication or miscellaneous business to discuss.

VII. OTHER BUSINESS

VIII. ADJOURN

M. Feig moved to adjourn. C. Moore seconded the motion. A vote was taken; all were in favor. The motion passed 5-0-0. The meeting was adjourned at 8:36 p.m.

Respectfully submitted,

Beth Hanggeli
Recording Secretary